

Chapter 7: Special Issues Related to Loan Guarantees

By guaranteeing a loan, the DOT promises to pay a lender in the event that the borrower defaults on its scheduled payments or other terms of the guaranteed loan. Accordingly, the DOT must have confidence that the guaranteed lender has entered into a reasonable loan agreement with the project sponsor and also is capable of fulfilling its loan servicing responsibilities. Accordingly, the DOT has established basic eligibility criteria to evaluate and approve guaranteed lenders prior to execution of a loan guarantee credit agreement. This chapter outlines these eligibility criteria as well as the guaranteed lender's major responsibilities.

Section 7-1

Guaranteed Lender Eligibility

The DOT will evaluate prospective lenders with respect to the following:

- The guaranteed lender must meet the definition of “lender” provided in the TIFIA legislation:

“... any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including:

 - (1) A qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and
 - (2) A governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.”
- The guaranteed lender must not be debarred or suspended from participation in any federal program.
- The guaranteed lender must not be delinquent on any federal debt or loan.
- The guaranteed lender must be duly organized and legally authorized to enter into the transaction.
- The guaranteed lender must demonstrate experience in originating and servicing loans for large-scale developments.
- The guaranteed lender must demonstrate that it has sufficient capital to originate the loan and disburse its own portfolio.

- If a guaranteed lender chooses to use a servicer, the guaranteed lender must demonstrate that the servicer is capable of handling the servicing responsibilities under the credit agreement. (The guaranteed lender shall remain responsible to the DOT for all servicing responsibilities under the credit agreement.)
- The guaranteed lender must provide certifications as outlined in the credit agreement with the DOT and must maintain lender eligibility conditions.
- The guaranteed lender must be approved by the DOT.
- The terms of the guaranteed loan must be provided by the guaranteed lender and approved by the DOT.
- The guaranteed lender must provide periodic financial information to DOT's loan servicer in accordance with requirements specified in the credit agreement.

Section 7-2

Guaranteed Lender Responsibilities

The guaranteed lender may perform the following types of activities. The DOT may request documentation demonstrating the guaranteed lender's capacity to handle such responsibilities.

- Loan file compilation and retention.
- Loan disbursement.
- Collection and accounting of all sums due and received under the terms of the loan, including release of liens for pay-off at maturity and prepayments.
- Maintenance of reserve accounts (if applicable).
- Supervision and quality control of servicing (if applicable).
- Negotiation and restructuring of loans - loan workouts as approved by the DOT.
- Coordination with senior lender/trustee (if applicable).
- Immediate notifications in the event of payment delinquency and/or default, other defaults under the loan guarantee, potential corrective action plans, potential workout plans, change in project sponsor status, change in lender status, change in project status, failure of project sponsor to meet terms of the loan, etc.

Section 7-3

Loan Guarantee Provisions

Credit Agreement

After the DOT has approved a guaranteed lender and a selected project has satisfied all conditions for TIFIA credit assistance, a credit agreement will be negotiated, and signed by the project sponsor, the lender, and the DOT. The DOT will monitor the project sponsor and the guaranteed lender according to the conditions and requirements outlined in the credit agreement. The DOT may periodically perform on-site reviews of the guaranteed lender's business operations or may request audited financial statements or updated certifications from the guaranteed lender indicating that the eligibility requirements are being maintained.

If the guaranteed lender fails to meet its obligations or to maintain the eligibility requirements, the DOT will advise the guaranteed lender of corrective actions that must be performed. If these corrective actions are not performed within the specified timeframe, the DOT may require a transfer of loan servicing to another entity and/or pursue legal remedies.

Payment Process

Under a loan guarantee, the DOT pledges to make the principal and interest payments as required by the guaranteed loan or to accept assignment of the note evidencing the guaranteed loan, at the DOT's option, in the event of an uncured default by the project sponsor.

After submission of a notice of default to the project sponsor, the DOT and the guaranteed lender will work with the project sponsor to cure the default. The guaranteed lender may enter into a loan workout or similar agreement with the project sponsor as approved by the DOT. In the event of assignment of the guaranteed loan to the DOT, the guaranteed lender is responsible for transferring all the guaranteed loan documents to the DOT.